

LAW LIBRARY OF CONGRESS
RIGHTS OF PEOPLE WITH DISABILITIES

AUSTRALIA

SUMMARY

Prior to 1980, Australian legislation focused on ensuring basic 'services to invalids'. Subsequently, statutes were amended and new ones promulgated, culminating in the national **Disability Discrimination Act 1992** ("DDA"). This statute and implementing regulations set an **ADA-like** framework for the protection of the rights of disabled persons. In 1994, the Commonwealth (federal) government issued a **10-Year Commonwealth Disability Strategy** to encourage federal agencies to set an example in promoting the national goals of equal opportunity for the disabled. In August 2002, the first set of national standards for equal access to transportation was submitted to Parliament for debate and enactment. Although the entire legislation is designed to ensure overall protection of the rights of persons with disabilities, lingering lack of national standards has delayed reaching the full objective.

Scope.

The DDA and implementing regulations apply to all employers, with the exception of the Armed Forces and other defense related employers; to all private and public employees; and to all public and private service providers. The DDA prohibits all forms of discrimination and mandates national standards to guarantee:

- Equal access to education;
- Equal access to employment;
- Equal access to public services;
- Equal access to membership in private organizations;
- The right to be accommodated;
- Barrier-free access to transportation;
- Barrier-free access to telecommunication;
- Barrier-free access to public buildings and services. and regarding access to membership in private organizations;
- Legal recourse and remedies.

Legislative Objective.

The DDA constitutes national **civil rights legislation**. The Commonwealth and the States share responsibility for promoting this legislative objective. However, the Commonwealth assumed legislative authority over the matter in order to facilitate equitable application and treatment of disabled persons regardless of the state of domicile.

The DDA contains operative definitions, foremost of

- "disability";
- "reasonable accommodation";

- and “unjustifiable hardship”.

Disability is broadly defined. The statute does not apply to the Military and defense related institutions and companies.

Public Policy Implementation.

The DDA established the **Commonwealth Human Rights and Equal Opportunity Commission** (“CHREOC”). The commission is tasked to:

- Propose parliamentary actions;
- Advise the courts on pending issues under the DDA, either directly or by filing *amicus curiae* briefs;
- Investigate allegations of violation under the DDA;
- Assist in resolving disputes between parties, and to refer unresolved complaints to the courts.

Enforcement and Remedies.

The CHREOC monitors compliance with the DDA and federal regulations, and voluntary action plans by service providers. The commission offices

- investigate all allegations of discrimination or violation of the DDA, and, if determined to have merit,
- attempts resolution through conciliation and mediation.

If unsuccessful, the disabled may sue in court. To date, most cases seem to have involved predominantly employment issues.

With regard to remedies, the courts seem to take a “make whole” approach. To date, court awards included

- Reinstatement,
- Back pay,
- Monetary damages, and
- Litigation costs in accordance with the principle “loser pays”.

Affirmative Defenses.

The DDA recognizes several affirmative defenses to alleged improper denial of accommodation or service:

- The desired accommodation/service would require services or facilities that are not required by persons without disabilities;
- The desired accommodation would create an unjustifiable hardship under the cost-benefit analysis;
- The disabled applicant/employee lacks the requisite qualifications; and
- The employer or service acted in accordance with the officially approved action plan.